

**DISCUSSION DRAFT LEGISLATION TO
ADDRESS LAW AND ORDER IN INDIAN
COUNTRY**

Thursday, June 19, 2008

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room 562, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Today the Committee is going to be holding a hearing to examine a draft bill to address law and order in Indian Country. Let me emphasize again this is draft legislation. I have put out draft legislation with co-sponsors, because I think it is important for us to be able to review something, evaluate and then respond to something that has some certainty to it with respect to the provisions we have written.

I understand there is controversy with many portions of legislation dealing with law enforcement on Indian reservations. We are willing to consider adjustments and changes.

But I do want to say this: I don't think it is an appropriate response for the Congress to do nothing about a very serious problem. As you know, this Committee this year has passed out an Indian Health Care Improvement Act. That has now passed the full Senate. We have passed out a piece of legislation dealing with Indian housing, reauthorization of the Indian housing laws. That has now not only passed out of this Committee but through the full Senate as well.

Another area where I believe there is a crisis is in the area of law enforcement. Four prior Committee hearings that we have held have established longstanding and life-threatening public safety crises that exist on some Indian reservations. Just a few of the findings include sexual and domestic violence have reached epidemic proportions; victims have to wait in many cases hours and weeks for a response to law enforcement calls, because tribal police are understaffed; the tribal jails system is a disaster; tribal courts are, in some cases, forced to set offenders who are clearly guilty free. The lack of consequences has created some notion of lawlessness in many communities.

There is enough blame to go around, but the United States Government, in my judgment, must take credit for much of this problem. Federal laws and court decisions established a system of justice that forces tribes to rely on the United States to investigate and prosecute violent reservation crimes.

We took a two step approach. First, the U.S. limited what tribes can do to fight crime in their own communities. So tribal police have limited access to information and limited arrest powers. Tribal courts can sentence offenders to no more than one year in jail. So today we have tribal courts who sentence rapists and child molesters to one year in jail. That is not justice.

Second, the United States said, we will do the job. More than 100 years ago, Congress established felony jurisdiction in the Department of Justice for crimes on reservations. With this authority, however, comes legal and binding obligations, in my judgment, to provide for public safety on reservation lands. Regrettably, I don't believe our Federal Government has met that obligation.

The United States has conflicting law enforcement priorities to fight terrorism, protect the homeland and secure the border. Fighting crime in Indian Country does not top the priority list or even show up on the priority list in most cases.

A November 2007 investigation of crime on Indian reservations was published in the Denver Post. It quoted a U.S. attorney who said the following: "I know that the performance of my office will be compared to other U.S. attorneys around the Country. My gun cases have to compete with other U.S. attorneys. My white collar crime cases have to compete. One criterion that is never on that list is Indian Country cases." That is from a U.S. attorney.

Now, there is some excellent work being done by some at the Justice Department. I don't want to take away from that work. I am not suggesting there isn't anybody out there who cares. I also understand that the Department of Justice has strong feelings about some of the provisions in the draft legislation that we are holding a hearing on today.

But I am not confident that our legal obligations to tribal communities are being met. In fact, I am confident of exactly the opposite conclusion: we are not meeting our obligations. This draft bill would ensure that Indian Country gets moved up on the priority list for this Country. When a community relies completely on a Federal agency to investigate and prosecute violent crimes and felonies, that reliance cannot go unheeded.

For the past year, this Committee has worked on this issue and in November, I released a concept paper. I asked staff, both Republican and Democratic staff on our Committee, to work together, to consult with tribes and other interested parties. One example of that was Senator Kyl and I held a hearing in Arizona. The staff director on the minority side and the majority side joined me. That was simply an example of the kinds of hearings and listening sessions we have held around the Country, bipartisan, cooperative, trying to figure out how can we work together to solve this problem.

The draft bill, which is a product of these consultations and is a bipartisan bill, contains these initial steps. It would put tools to fight crime in the hands of tribal justice officials, tools they don't

now have. It would enhance coordination and consultation between Federal and tribal justice officials. And it would provide greater cooperation as well at the local level, between tribes and local communities, which I think is essential.

The bottom line is, we have to act to change this system to make it work for the citizens of Indian Country instead of providing opportunities for criminals and drug cartels to find ways of avoiding prosecution.

So I look forward to the testimony today that we will have from a number of witnesses about the draft legislation. I appreciate the bipartisan support from my colleagues, who have co-sponsored this legislation. And again, while we are waiting for the Vice Chair, I want to recognize others for any opening comments.

**STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman. I appreciate what you are doing with this hearing today. I think it is very timely that we discuss law enforcement in this Committee.

In Wyoming, we are dealing with a recent tragedy on the Wind River Reservation, three young teenage girls were found dead on Wednesday, June 4th, just earlier this month. Their deaths shine light on the troubled situation for Indian youth in Wyoming. This is a tragedy for the Northern Arapaho Tribe, the Wind River community, and for the entire State of Wyoming. It brings into focus the desperate need to fight the root causes of law-breaking on Indian reservations. Crime is a cycle that can only be broken with consistent effort among our young people on the reservation.

Mr. Chairman, Federal law enforcement is not meeting the need on the Wind River Reservation currently. This reservation covers 2.2 million acres. Well, that is larger than either the entire State of Delaware or of Rhode Island. Yet BIA law enforcement struggles to keep more than two or three officers on patrol at any given time. So if you can imagine the State of Rhode Island or the State of Delaware with only two officers on patrol at any given time, absolutely insufficient.

I commend the hard work that the officers who are on patrol are doing. But the desperately need more help. There is a problem with recruitment, a problem with retention. In addition, we need better community outreach and youth programs. The officers on the reservation have to tangle with drugs, with illegal weapons and gangs on the reservation every day.

I would just like to reflect, Mr. Chairman, I have practiced medicine for 25 years as an orthopedic surgeon in central Wyoming. Early in the practice, I was called to take care of a young man from the reservation who was sent to the hospital in Casper. I was taking care of him for a broken bone, but it was a result of trauma by some other young men from the reservation on him.

The thing I will never forget is the smell in the room, because one of those criminals taking advantage of this young man chose to, with a cigarette, burn his initials into the abdomen of the other man. It kind of made a number of dots connecting together to make up the letters of his initials, of the criminal, of the person who was doing this. It was his initials, not the ones of the injured man.

It is a smell that will stay with me forever, the smell of burned flesh, one person doing this to another, which really to me highlighted and has continued to highlight the major issues that you are trying to deal with her. I commend you for your efforts and I want to help in every way that I can and work with you, Mr. Chairman. So thank you very much.

The CHAIRMAN. Senator Barrasso, thank you very much.
Let me call on Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman. I too want to echo the comments of Senator Barrasso in thanking you for bringing forward this draft legislation. I do think it is very timely. To be honest with you, it should probably have been addressed a while back. The Department of Justice, I don't think, has done what is necessary.

This isn't the time to point fingers, it is the time to talk about proper staffing, proper infrastructure, proper jurisdiction. And it is a time to work together with the Department of Justice. Hopefully they understand there is a problem here, and hopefully through bills like this one, if we can get it through the process, we can solve the problems that revolve around crime in Indian Country. Because quite honestly, at this point in time, it is a tragedy.

There's barely a week that goes by that there is not a problem. I think a lot of it has to do with staffing and consequences, once a person is picked up, how they are handled and the ability of the courts to handle people and have a place to put them once they are found guilty.

So thank you, Mr. Chairman. I appreciate it.

**STATEMENT OF HON. DANIEL K. AKAKA,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Senator Akaka?

Senator AKAKA. Thank you very much, Mr. Chairman. I want to add my welcome to the tribal leaders as well as the national Indian Country leaders who are here in the room today, and to urge you, as the Chairman has, to continue to be part of the effort to help Indian Country.

One that is pending, and we urge you to also lobby on the other side of the Hill on the Indian Health bill. We really need to pass that. Now here, again, I want to commend the leadership of our Chairman Dorgan for what he has done in drafting this Indian Country bill on law and order, which is really needed. So the Committee intends to hear as much as we can from you and to finally make a decision.

Again, I want to urge this Committee and the leadership of our Chairman to move this as quickly as we can. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Akaka, thank you very much.
Senator Cantwell?